

### **REMARKS**

Claims 1-45 remain pending and under consideration. Claims 1, 17, and 38 are independent claims. Reexamination and reconsideration of the application are hereby respectfully requested.

#### ***Rejections under 35 USC §103***

Claims 1-45 stand rejected under 35 USC §103 as being unpatentable over Connolly (US 4,356,933) in view of Chiu (US 5,943,709) or over Connolly in view of Chiu and further in view of Gillebaard (US 5,592,702).

The rejections are overcome since it is believed that Claims 1-45 patentably distinguish over Connolly, Chiu, and Gillebaard.

It is stated in the Office Action that

Connolly discloses a fluid storage tank and method of assembly comprising a tank frame and a tank liner, the tank frame has a plurality of vertical supports, a plurality of lower cross members and a plurality of upper cross members, the vertical supports have upper and lower brackets, as stated in the specification in col. 1, lines 59-66 a bracing not shown may be used to provide a collapsible structure with a clevis pin and spring clip...

It is further stated that "The brackets allow relative angular motion between the vertical supports and the upper and lower cross members, respectively." Applicants respectfully traverse this assertion, and respectfully submit that Connolly fails to disclose a tank frame wherein "each of the upper and lower cross members is connected to the respective upper and lower brackets so as to allow relative angular motion between the vertical frame members and the connected upper and lower cross members" as recited in independent Claims 1, 17, and 38.

Applicants respectfully submit that the bracing members disclosed by Connolly, but described as "not shown" at column 1 line 59, do not correspond to any element recited in the independent claims of the instant application. The "brackets" recited in the independent claims would correspond to the T-fittings shown in Fig. 1 of Connolly coupling vertical rods 16 to horizontal members 14 and 15. These T-fittings are clearly not equivalent to the "bracing members", since they *are shown* in Fig. 1 of Connolly.

Further, the statement of Connolly that “Such bracing members may be constructed so as to pivot into alignment with rods 16 when the tank is collapsed” is the only hint of any angular motion between any frame members, but clearly does not indicate angular motion between rods 16 and horizontal members 14 and 15 when the tank frame is assembled (which would be required to meet the limitations of the independent claims). There is no teaching or suggestion in Connolly or the other cited references that the vertical members and horizontal members should be connected by brackets that allow relative angular motion. Since all elements and limitations recited in the independent claims are not disclosed by the cited references, those references cannot establish *prima facie* obviousness (MPEP 2143.03). Applicants therefore respectfully submit that rejection under 35 USC § 103 is improper, and respectfully request withdrawal of the rejection.

Further, the limitation recited in independent Claims 1, 17, and 38 that “each of the upper and lower cross members is connected to the respective upper and lower brackets so as to allow relative angular motion between the vertical frame members and the connected upper and lower cross members” (and then further quantified in dependent Claims 13, 14, 30, 31, 42, and 43) yields the new and useful result (*In re Wright*, 122 USPQ 522) that the fluid storage tank can be assembled and filled on rough, uneven, and/or sloped terrain (as described at ¶¶ [0016] and [0023] of the specification). None of the cited references discloses assembling or filling a fluid storage tank or pool on rough, uneven, or sloped terrain, nor do any of the cited references suggest the desirability of doing so. As such, the cited references cannot establish *prima facie* obviousness (MPEP 2143.01). Applicants therefore respectfully submit that rejection under 35 USC § 103 is improper, and respectfully request withdrawal of the rejection.

Dependent Claims 3 and 20 recite that “the tank liner, vertical support members, lower cross members, and upper cross members together weigh less than about 110 pounds” and that “the capacity of the tank is greater than about 1000 gallons”. The first limitation ensures that a single person can typically carry the disassembled tank to a remote location, e.g., for fire fighting and the like. The second limitation ensures that the tank, once assembled, holds sufficient fluid to be useful, e.g., for fire fighting and the like. While either limitation alone might be considered a “matter of engineering optimization” as stated in the Office Action, both limitations in combination yield the new and useful result (*In re Wright*, 122 USPQ 522) of a portable fluid storage tank of at least 1000 gallon capacity that can nevertheless be carried by a single person (as

described at ¶ [0029] of the specification). The desirability of this result is not taught or suggested in any cited reference. Applicants respectfully request that a pertinent reference be cited, that an affidavit be provided in accordance with 37 CFR § 1.104(d)(2), or that the rejection be withdrawn.

Dependent Claims 6, 23, and 41 recite that “the tank liner, vertical support members, lower cross members, and upper cross members together weigh less than about 150 pounds”, that “the length of the container with the tank liner, vertical support members, lower cross members, and upper cross members together therein is less than about 108 inches”, that “a sum of the length and the girth of the container with the tank liner, vertical support members, lower cross members, and upper cross members together therein is less than about 130 inches”, and that “the capacity of the tank is greater than about 1000 gallons”. The first three recited limitations ensure that the tank falls within the size and weight limits of most commercial overnight delivery services. The last recited limitation ensures that the tank, once assembled, holds sufficient fluid to be useful at its destination. While any of these limitations alone might be considered a “matter of engineering optimization” as stated in the Office Action, all four limitations in combination yield the new and useful result (*In re Wright*, 122 USPQ 522) of a portable fluid storage tank of at least 1000 gallon capacity that can nevertheless be shipped by standard commercial overnight delivery service (as described at ¶ [0030] of the specification). The desirability of this result is not taught or suggested in any cited reference. Applicants respectfully request that a pertinent reference be cited, that an affidavit be provided in accordance with 37 CFR § 1.104(d)(2), or that the rejection be withdrawn.

### ***Conclusion***

In view of the above, it is respectfully submitted that Claims 1-45 are in condition for allowance. Reconsideration of the rejections is respectfully requested. Allowance of Claims 1-45 at an early date is earnestly solicited.

Respectfully submitted,

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